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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIO CEASER NAVARETTE,

Defendant and Appellant.

A124062

(San Francisco County
Super. Ct. No. 204571)

I.

INTRODUCTION

Defendant Julio Ceasar Navarette was convicted following his guilty plea to second degree robbery. (Pen. Code, § 211.¹) Defendant contends that the trial court erred in denying his motion to suppress evidence pursuant to section 1538.5, because BART police officers lacked reasonable suspicion to detain him following a report of possible fraudulent credit card use at a BART station. We disagree and affirm.

II.

FACTUAL AND PROCEDURAL
BACKGROUND²

On January 7, 2008, at approximately 1:30 p.m., Silverio Gonzales, a station agent at the 16th Street Bay Area Rapid Transit (BART) station in San Francisco, was

¹ All statutory references are to the Penal Code unless otherwise indicated.

² On appeal, the court considers only the testimony from the hearing on the motion to suppress. (*People v. Neighbours* (1990) 223 Cal.App.3d 1115, 1119-1120.)

approached by an unknown patron who stated that he had observed two people using “a lot of credit cards to purchase tickets.” Gonzales pointed to defendant and a female companion³ and confirmed with the patron that they were the ones acting suspiciously. Gonzales observed defendant and Castle for 30 seconds. He witnessed them standing shoulder to shoulder around the ticket machine, “really huddled together.” He could “see their arms and hands moving where the . . . insert for the credit card is and where the tickets come out on the bottom.” Gonzales later testified at the hearing on the motion to suppress: “[t]he way they were huddled around the machine was unusual.” Gonzales could not see the ticket screen “because [defendant and Castle] were just like covering it.” Gonzales saw defendant and Castle enter the paid area, and he found it odd that they used tickets that were not purchased that day to enter the system, presumably because they had just used the ticket machine.

Based on the unknown patron’s statement and his own observations, Gonzales called BART dispatch from the station phone. He testified that he told dispatch, “I kind of believe there’s two people here, um, using fraudulent credit cards to purchase tickets.” He added that “[t]hey have a bunch of tickets they purchased, and a customer came up to me saying that they had been purchasing a lot of tickets with different credit cards.” Gonzales provided dispatch with a description of defendant and Castle, including what they were wearing. After the two entered the paid area, Gonzales followed them onto the platform and called dispatch from his cell phone to report that the pair was boarding the first car of a northbound train, headed toward the Civic Center station.

Dispatch contacted BART police officers Esteban Toscano and Shaunte Barnes, who were working at the Civic Center station. The call from dispatch stated, “484(g),^[4] two suspects—two people using multiple credit cards to buy BART tickets, witnessed by the station agent.” A second call from dispatch reported that defendant and his

³ The companion was later identified as Melissa Castle. Defendant and Castle were charged as codefendants in the information. Castle is not a party to this appeal.

⁴ Officer Toscano testified that “484(g)” (presumably a reference to section 484g) can mean “theft via access card, or using an access card that is known to be lost or stolen.”

companion were using “different credit cards.” Dispatch also provided the officers with the descriptions of the two suspects given by Gonzales and the location of the train they had boarded. The officers proceeded down to the BART platform and waited for the northbound train. When the train arrived, defendant and Castle off-boarded; they matched the description that dispatch had given. The officers approached defendant and Castle and informed them that they were being detained on suspicion of theft of access cards, and that a witness was on the way to identify them. The officers testified that they had no independent reason for detaining defendant and Castle; they were relying solely on the information provided by dispatch.

While they waited for the station agent to arrive, defendant admitted to using credit cards that were not his to purchase two BART tickets. Defendant pulled several credit cards out of his waistband and claimed that he had found them nearby. Defendant was arrested, and shortly thereafter it was discovered that the credit cards had been stolen during a robbery 12 hours earlier at Mission and 17th Streets. The robbery victim went to the BART police facility after defendant’s arrest and identified the credit cards, identification, and cellular phone that were found on defendant and Castle as the items that were taken during the robbery.

On March 18, 2008, defendant was charged by information with second degree robbery (§ 211), receiving stolen property (§ 496, subd. (a)), commercial burglary (§ 459), grand theft by access card (§ 484g, subd. (a)), and possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)).

Defendant filed a motion to suppress, claiming that the officers lacked reasonable suspicion to detain him, violating his Fourth Amendment rights. Following a hearing on June 13, 2008, the trial court denied the motion. On July 30, 2008, pursuant to a plea agreement, defendant pleaded guilty to second degree robbery (§ 211). The other charges were dismissed. Defendant was sentenced to three years in state prison, plus one year for a prior conviction (§ 667.5(b)) for a total of four years. This timely appeal followed.

III. DISCUSSION

Defendant argues that the officers lacked reasonable suspicion to detain him. On appeal, we defer to the trial court's factual findings, express or implied, where supported by substantial evidence. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*Ibid.*)

A police officer is justified in stopping and detaining a person if the circumstances give rise to a reasonable suspicion that the person is involved in criminal activity. (*United States v. Sokolow* (1989) 490 U.S. 1, 7.) Reasonable suspicion is a less demanding standard than probable cause and is determined in light of the totality of the circumstances. (*Id.* at pp. 7-8.) In addition, "reasonable suspicion can arise from information that is less reliable than that required to show probable cause." (*Alabama v. White* (1990) 496 U.S. 325, 330.) The issue is whether the officers can point to specific and articulable facts that give rise to a reasonable suspicion of criminal activity. (*Terry v. Ohio* (1968) 392 U.S. 1, 21-22.) An investigative detention based on "a mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in good faith." (*People v. Conway* (1994) 25 Cal.App.4th 385, 389.)

Officers may base a reasonable suspicion of criminal activity on any information they receive so long as the quality and quantity of the information supports a reasonable suspicion in light of the totality of the circumstances. (*Alabama v. White, supra*, 496 U.S. at pp. 330-331.) Information coming to police from an anonymous tip, without any corroboration, " 'seldom demonstrates the informant's basis of knowledge or veracity.' " (*Florida v. J.L.* (2000) 529 U.S. 266, 270.) However, if the anonymous tip is suitably corroborated, it can exhibit " 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.' " (*Ibid.*) Even an anonymous tip is more reliable where the informant is " 'reporting what he had observed moments ago,' " not stale or second-hand information.' " (*People v. Dolly* (2007) 40 Cal.4th 458, 468; see also *U.S. v. Terry-Crespo* (9th Cir. 2004) 356 F.3d 1170, 1177.)

Here, officers Toscano and Barnes admitted to having no independent grounds for detaining defendant, so the justification for the detention rests solely on whether the citizen's tip, along with Gonzales's observations, provided an objective basis to find reasonable suspicion.⁵ Defendant argues that "the single, bare statement" provided by the anonymous patron that defendant and his companion were using "a lot of credit cards to purchase tickets" was insufficient to provide reasonable suspicion. However, the patron's observation was corroborated by the station agent, who independently observed defendant and Castle before calling the police. The station agent immediately confirmed that there were two people who matched the description provided by the patron who were using the machine in an unusual manner. Although the agent did not see whether the two were using multiple cards, as defendant argues, he was able to observe their arms and hands moving in a way that was consistent with this allegation. Gonzales had been employed as a station agent for five years, and was presumably familiar with how patrons purchase tickets. In addition, information from the tipster patron was delivered face-to-face to Gonzales, indicating a higher level of reliability than a truly anonymous tip. (*People v. Coulombe* (2000) 86 Cal.App.4th 52, 58.) When Gonzales went to the platform to call dispatch to inform them of the direction defendant and Castle were heading, he again saw the patron, and the patron pointed him in the direction of defendant. The patron "who supplied the information subjected [himself] to scrutiny and the risk of losing [his] anonymity by directly approaching the [station agent] rather than calling in [the] information." (*People v. Coulombe, supra*, 86 Cal.App.4th at p. 58.) The station agent traveled to the Civic Center station to identify defendant and Castle, and later testified in court. The patron's observation, corroborated by the station agent, was sufficiently reliable to form the basis of a reasonable suspicion that defendant was involved in criminal activity.

⁵ Defendant raised a *Harvey-Madden* objection below to the information provided to the officers by dispatch. (*People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017.) On appeal, the only argument he raises is whether there was reasonable suspicion based on the patron's tip and the station agent's observations.

Defendant also focuses on the fact that there are innocent explanations for using multiple credit cards. “A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.” (*United States v. Arvizu* (2002) 534 U.S. 266, 277.) The issue is whether the totality of the circumstances is sufficient to support a reasonable suspicion that criminal activity is afoot, and the suspect is connected to the criminal activity. (*United States v. Sokolow, supra*, 490 U.S. at p. 7.) The patron tipster’s information regarding the use of multiple credit cards, plus Gonzales’s observations, suffice. Gonzales saw the suspects huddled together in front of the ticket machine in a way he thought was unusual. He witnessed their arms and hands moving in a manner that was consistent with the patron’s observation that they were using multiple credit cards. He was unable to see the ticket screen to confirm the purchase of multiple tickets because defendant and Castle were covering it. Finally, defendant and Castle did not use tickets purchased that day to enter the paid area, making their use of the ticket machine at all that day more suspicious.

Under the totality of the circumstances, there was reasonable suspicion that defendant was involved in criminal activity, justifying the detention. The trial court did not err in denying the motion to suppress.

IV.
DISPOSITION

The judgment is affirmed.

Sepulveda, J.

We concur:

Ruvolo, P. J.

Rivera, J.